

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWARD BANKS,

Plaintiff,

- against -

MCGLYNN, HAYS & CO., INC., et al.,

Defendants.

19-CV-5727 (JPO) (RWL)

ORDER

X

ROBERT W. LEHRBURGER, United States Magistrate Judge.

This order resolves Defendant's request to compel Plaintiff to produce a redacted version of the single redacted 3-line passage in the notes of Plaintiff's mental health expert. (Dkt. 265.) The passage reflects a statement made by Plaintiff's counsel, in a meeting with the expert and Plaintiff, regarding counsel's interpretation of an aspect of Plaintiff's mental state. As a statement made to Plaintiff's testifying expert, the statement is not attorney-client privileged. It may, however, be attorney work product as it reflects counsel's impressions. Plaintiff's counsel represents that the expert did not rely on her statement in forming his opinions about Plaintiff's mental status. That may be so, but he obviously deemed the statement important enough to write down and necessarily considered it even if choosing not to rely on it. There is no other means for Defendant to learn the content of the statement. Although the Court believes the passage in question may well be inconsequential, the work product protection is overcome. Accordingly, Plaintiff shall produce an unredacted version of the page of notes at issue. To be clear, this ruling does not preclude Plaintiff from making a motion in limine to preclude admission of the passage as evidence on summary judgment or at trial.

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DOC #: _____
DATE FILED: 9/3/2021

SO ORDERED.



ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: September 3, 2021
New York, New York

Copies transmitted this date to all counsel of record.